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Via Certified Mailing – Return Receipt

June 22, 2017

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Pat Henderson - Chief Winemaker
Kenwood Vineyards
9592 Sonoma Highway
Kenwood, CA 94592

Pernod Ricard Kenwood Holdings, LLC
Attn: Owners and Managing Agents
9592 Sonoma Highway
Kenwood, CA 94592

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)

Dear Mr. Henderson, Owners and Managing Agents:

NOTICE OF ALLEGED VIOLATIONS

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that River Watch believes are occurring at Kenwood Vineyards, located at 9592 Sonoma Highway in Kenwood California. Notice is being sent to Kenwood Vineyards and Pernod Ricard Kenwood Holdings, LLC as the responsible owners, operators, and managers of Kenwood Vineyards, hereafter referred to collectively as "the Discharger". This Notice addresses violations of the CWA including violations of the terms of the new General California Industrial Storm Water Permit.

CWA §301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States unless such discharge is in compliance with various enumerated sections of the Act. Among other things, CWA § 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual National Pollutant Discharge Elimination System ("NPDES") permit or a general NPDES permit issued pursuant to CWA § 402(p), 33 U.S.C. § 1342. CWA § 402(p), 33 U.S.C. § 1342(p), establishes a framework for regulating storm water discharges under the NPDES program. States with approved NPDES

permitting programs are authorized under this section to regulate storm water discharges through permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA § 402, the Administrator of the U.S. Environmental Protection Agency (“EPA”) has authorized California’s State Water Resources Control Board (“SWRCB”) to issue NPDES permits including general NPDES permits in California.

The SWRCB elected to issue a statewide general permit for industrial discharges and issued NPDES Permit No. CAS000001, SWRCB Order No. 92-12-DWQ (the “General Permit”) on or about November 19, 1991, modified it on or about September 17, 1992, reissued it on or about April 17, 1997, and amended it significantly on April 1, 2014 (effective July 1, 2015), pursuant to CWA § 402(p). In order to discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and complied with its terms.

The new General Permit applies to wineries under Standard Industrial Code (“SIC”) 2084. Under the previous General Permit, many wineries qualified for the “light industry exemption”. Light industry facility dischargers excluded from coverage under the previous General Permit (Order No. 97-03-DWQ) must obtain the appropriate coverage under the new General Permit, because the new General Permit does not contain the “light industry exemption”. (Order No. 2014-0057- DWQ, I.O.72.)

Facilities not qualifying for No Exposure Certification (“NEC”) or Notice of Non-Applicability (“NONA”) status must submit a Notice of Intent (“NOI”) via SMARTS to be covered under the new General Permit (Order No. 2014-0057-DWQ II.B.) The Discharger submitted a NOI to the SWRCB via SMARTS on August 10, 2015, agreeing to comply with the terms and conditions of the new General Permit. The SWRCB approved the NOI, and the Discharger was assigned Waste Discharger Identification (“WDID”) number 2 491025929.

River Watch, on the basis of records publicly available and/or records in the possession and control of the Discharger, contends that in the continuing operation of Kenwood Vineyards, the Discharger has failed and is failing to comply with the strict terms and conditions of the General Permit – specifically, the requirements governing sampling and analysis, the foundation upon which the Discharger can prepare and implement effective Best Management Practices (“BMPs”) in its Storm Water Pollution Prevention Plan (“SWPPP”) for Kenwood Vineyards, ensuring the elimination of all non-authorized storm water discharges.

CWA § 505(b) requires a citizen to give notice of the intent to file suit sixty (60) days prior to the initiation of a civil action under CWA § 505(a) of the Act. Notice must be given to the alleged violator, the EPA, and the state in which the violations occur.

As required by the CWA, this Notice provides notice to the Discharger of the violations that have occurred, and continue to occur at Kenwood Vineyards. Consequently, the Discharger is placed on formal notice by River Watch that after the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, NPDES permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, CWA §§ 301(a), 402(p), and 505(a)(1), as well as the failure to comply with requirements set forth in the Code of Federal Regulations and the San Francisco Bay Regional Water Quality Control Board (“RWQCB”) Water Quality Control Plan or “Basin Plan.”

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. The Specific Standard, Limitation, or Order Alleged to Have Been Violated.

To comply with this requirement, River Watch notices the Discharger of ongoing violations of the substantive and procedural requirements of CWA §402(p) and violations of NPDES Permit No. CAS000001, State Water Resources Control Board, Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ and Order No. 2014-0057-DWQ (the “General Permit”) relating to industrial operations at Kenwood Vineyards.

Under the new General Permit, the Discharger is required to develop and implement a site-specific SWPPP (Order No. 2014-0057, DWQ, X.A.) The Discharger submitted a SWPPP via SMARTS dated June 26, 2015. The Discharger is required to collect and analyze storm water samples from two (2) Qualifying Storm Events (“QSEs”) within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30). (Order No. 2014-0057-DWQ, XI.B.2.) The Discharger is required to sample for the full range of mandated pollutants and “Additional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment (Section X.G.2)”. (Order No. 2014-0057-DWQ, XI.B.6.c.)

The new General Permit also requires that:

“New Dischargers applying for NOI coverage under this General Permit that will be discharging to a water body with a CWA § 303(d) listed impairment are ineligible for coverage unless the Discharger submits data and/or information, prepared by a QISP, demonstrating that:

1. The Discharger has eliminated all exposure to storm water of the pollutant(s) for which the water body is impaired, has documented the procedures taken to prevent exposure onsite, and has retained such documentation with the SWPPP at the facility;
2. The pollutant for which the water body is impaired is not present at the Discharger's facility, and the Discharger has retained documentation of this finding with the SWPPP at the facility; or,
3. The discharge of any listed pollutant will not cause or contribute to an exceedance of a water quality standard. This is demonstrated if: (1) the discharge complies with water quality standard at the point of discharge, or (2) if there are sufficient remaining waste load allocations in an approved TMDL and the discharge is controlled at least as stringently as similar discharges subject to that TMDL." (Order No. 2014-0057-DWQ, VII.B.)

2. The Activity Alleged to Constitute a Violation.

The Kenwood Vineyards site and facility comprises approximately 32.85 acres in the town of Kenwood, County of Sonoma, California. Vineyards are located immediately adjacent to the winery facility. Facility Operations, as described in Section 2.1.2 of the Discharger's SWPPP, consist of all activities required to produce, distribute and sell wine onsite. Specific industrial activities include:

- Receiving area for grapes, crush pad and shipping/receiving of wine.
- Dumpster staging area for general trash and recycling.
- Loading and unloading of CO₂, SO and other chemicals essential to production of wine.
- Disposal and removal of spent grape skins, grape stems, and diluted grape juice.

The site and facility includes a tasting room, visitors' center and offices. Nine buildings, two parking areas, a loading dock, and 4 outside production areas on site are used seasonally. Of the developed area 7,750 square feet (0.178 acres), used seasonally for grape and wine processing activities, are directly exposed to precipitation and stormwater runoff. The entire site and facility contains five designated drainage areas and two diversion inlets. Processed wastewater is diverted to a process water leachfield. There is no process water treatment at the winery facility. A single ultimate drainage area drains into an onsite frost protection pond. The outlet of the pond leads to a drainage ditch that flows into Sonoma Creek which leads to San Pablo Bay – a water of the United States. Stormwater is conveyed through a series of drains and impervious areas that lead into the water storage pond. The

pond, designated as SL-1, is the sole sampling location. Water from the pond is used for frost and fire protection.

Section 2.1.5 of the Discharger's SWPPP for Kenwood Vineyards describes procedures to be followed to prevent pollutants from entering diversion inlets during storm events:

"2.1.5 Procedures Associated with Diversion System

The Kenwood Vineyards facility contains 2 diversion inlets. One diversion inlet is located on the south side of the Bottling Building, and the second diversion inlet is located on the north side of Ferm 4, which contains a fermentation cellar. The following procedures should be implemented in sequential order as displayed below during a storm event to minimize the pollutants and contaminants that could enter the storm drainage system:

- Prior to a storm event all industrial activities and materials within the drainage area of each diversion valve and/or plug onsite should be ceased and properly contained.
- Proper BMPs should be implemented to minimize the potential for pollutants to enter the storm drain system.
- A properly trained employee should manually set the diversion valve and plug to drain to the storm drainage system; and,
- At the completion of the storm event and before industrial activities are reinstated within the drainage area of each diversion system, the same employee should manually set the diversion valve and plug to drain to the process wastewater system.
- In the event industrial activities and/or materials are no longer exposed to storm water within the drainage area of the diversion inlet and proper BMPs have been implemented within the vicinity of all previous industrial activities or materials, the diversion system may be set to divert runoff to the storm drain. If circumstances change and industrial materials or activities become exposed to storm water this exception no longer applies.

Failure to properly operate both diversions may potentially produce an exceedance of the NALs and/or unauthorized discharges, potentially affecting the status of the Exceedance Response Action (ERA) Status."

Pomace is temporarily stored on a gravel lot above the water storage tanks at the top of the winery facility. Storm water and run-on water is diverted from entering the Sonoma Creek by concrete walls which exist as a berm. (See location DA-6 on the Site Map; (SWPPP section 2.1.6.)

Specific drainage areas are described at Section 2.1.4 of the Discharger's SWPPP:

“Drainage Area 1: Parking lot and Loading dock: This area envelops the winery and includes the parking lots loading dock (which is covered) and associated access roads. Stormwater from roofs are also channeled into this area. It represents the majority of the impervious area and stormwater runoff at the facility.

Drainage Area 2: Ferm 6 Production area: This is a seasonal production area used for juice and wine processing. It is located at the back of the bottling warehouse covering approximately 2,000 square feet. The drains in this location have diversion valves that allow them to go to either the industrial waste water system or the stormwater system.

Drainage Area 3: Press pad: This is a seasonal production area used for processing fruit during harvest. It is located at the back of the main fermentation building covering approximately 3,500 square feet. The drains in this location have diversion valves that allow them to go to either the industrial waste water system or the stormwater system.

Drainage Area 4: Crush pad: This is a seasonal production area used for processing fruit during harvest. It is located between buildings 5 & 7 and covers approximately 1,500 square feet. The drains in this location flow to the industrial waste water system.

Drainage Area 5: Ferm 5 Apron: This is a year round production area that is used infrequently for loading trucks with juice or wine. It is located at the back of fermentation room 5 covering approximately 750 square feet. The drains in this location have diversion plugs that allow them to go to either the industrial waste water system or the stormwater system.”

Many of the activities described above take place in locations where pollutants and contaminants associated with those activities could enter the storm drainage system. The Stormwater Containment and Discharge Reduction BMPs are described in the Discharger's SWPPP in generic, non-specific language with reference to the relevant BMP fact sheets included in Appendix G. “[Include additional descriptions of specific stormwater containment and discharge reduction BMPs that will be implemented onsite.]” (SWPPP

section 3.1.) However, under the heading “Appendix G CASQA Stormwater BMP Handbook Portal: Industrial and Commercial Fact Sheets”, the page is blank. (SWPPP p. 71.)

It is only by sampling for the full range of constituents required under the new General Permit that the Discharger can demonstrate the effectiveness of BMPs at the Kenwood Vineyards facility in preventing non-authorized stormwater discharges.

A. Failure to Sample for Additional Parameters

The Discharger’s operations at Kenwood Vineyards trigger monitoring and sampling requirements for the full range of mandated and “additional parameters” (Order No. 2014-0057-DWQ, XI.A.). A review of the Discharger’s monitoring and sampling reports shows the Discharger has been sampling only for the mandated pollutants – Total Suspended Solids (“TSS”), Oil and Grease, and pH. Table 2.1 in the Discharger’s SWPPP identifies the following additional pollutants specific to the Kenwood Vineyards facility: Truck Oil, Sediment, Fruit Juice, Organics, Acetic Acid, Halogens, Acetic Oxides, Ethylene Glycol. The Discharger has failed to identify and sample for parameters that serve as indicators of the presence of these additional, site-specific pollutants identified in the pollutant source assessment of the Discharger’s SWPPP.

Indicator parameters to determine whether any of these additional pollutants are present in the discharge from the Kenwood Vineyards facility are suggested in the General Waste Discharge Requirements For Discharges of Wine, Beverage and Food Processor Waste To Land (“WDR”), Order No. R1-2014-0041. WDR Section V.B, Effluent Limitations, Table 4, identifies final effluent limits for the following constituents: Biological oxygen demand (“BOD”), Ammonia, Nitrate as N, Nitrite, TDS, Sodium and Chloride. To comply with Section X.G.2 of the new General Permit, the Discharger is required to sample for some or all of these constituents for which the WDR sets regulatory limits, as representative of the pollutants identified in the pollutant source assessment in the Discharger’s SWPPP. As an alternative, the Discharger may sample for other constituents which the Discharger identifies as representative of the pollutants identified in the pollutant source assessment in the Discharger’s SWPPP.

Industrial operations taking place at Kenwood Vineyards is conducted both indoors and outdoors, where it is subject to rain events. Because the Discharger has not qualified for NEC or NONA status, there is no SWRCB or RWQCB exemption from the collecting and analyzing of the mandated parameters and any additional parameters identified by the Discharger, on a facility-specific basis, that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment in the Discharger’s SWPPP. (Order No. 2014-0057-DWQ, X.G.2). Without implementing the full range of required

sampling and analysis, there is no accurate measure by which to determine whether additional BMPs are required to ensure no unlawful discharge(s) of pollutants specific to the facility occurs as a result of activities taking place on site.

B. Failure to Demonstrate the Discharge Will Not Contribute to the Exceedance of a Water Quality Standard for a TMDL Listed Pollutant

The Discharger's SWPPP describes the Kendall Vineyards facility as discharging to Sonoma Creek which has adopted total maximum daily loads ("TMDL") for water quality impairment on the most recent CWA § 303(d) list for Nutrients, Pathogens and Sediment/Siltation. (SWPPP Section 2.1.1). Section 3.1.5 of the SWPPP describes erosion and sedimentation controls implemented at the Kenwood Vineyards facility. However, sampling at the sole sampling location, identified as the Pond, "SL-1" in SWPPP Section 5.6.2, does not include sampling for sediment to confirm the effectiveness of the erosion and sedimentation controls. Nor is there sampling for nutrients or pathogens even though grape pomace is temporarily stored on a gravel lot above the water storage tanks at the top of the winery facility, where storm water and run-on water is allegedly diverted by a concrete berm. (SWPPP section 2.1.6). Without sampling for the presence of these pollutants in the discharge from the facility, the Discharger has failed to demonstrate that its discharges will not contribute to the exceedance of a water quality standard for a pollutant for which the receiving water, Sonoma Creek, is listed as impaired pursuant to CWA § 303(d).

Compliance with these General Permit requirements is central to the effectiveness of the General Permit program. The new General Permit went into effect beginning July 1, 2015. River Watch alleges the Discharger has failed and is failing to comply with the General Permit annual reporting requirements for reporting years 2015-2016 and 2016-2017. The WDR finds that "Wine, beverage and food processor waste has a potential to impact water quality." (Order No. R1-2014-0041, Findings II. B.) Kenwood Vineyards is one of thousands of wineries and vineyards in the ever expanding northern California wine industry the discharges from which are impacting public health and habitat for listed species in the beautiful but fragile wine country. The cumulative effect of discharges from facilities which fail to fully comply with regulatory requirements has caused a marked decline in protected species, especially in threatened or endangered salmonids including Chinook salmon, Coho salmon, and Steelhead trout.

3. The Person or Persons Responsible for the Alleged Violation.

The entities responsible for the alleged violations are Kenwood Vineyards and Pernod Ricard Kenwood Holdings, LLC, referred to collectively herein as "the Discharger".

4. The Location of the Alleged Violation(s).

The location of the various violations is the permanent address of Kenwood Vineyards at 9592 Sonoma Highway, also known as Highway 12, in Kenwood, California.

5. The Date or Dates of Violation or a Reasonable Range of Dates During Which the Alleged Activity Occurred

The range of dates covered by this Notice is from July 1, 2015 to June 15, 2017. River Watch will from time to time update this Notice to include all violations which occur after the range of dates covered by this Notice. Some of the violations are continuous in nature, therefore each day constitutes a violation.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice

The entity giving this Notice is California River Watch, an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California. River Watch's mailing address is 290 South Main Street, #817, Sebastopol, California 95472.

River Watch is dedicated to protecting, enhancing and helping to restore surface and ground waters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and to educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice, identified below.

Jack Silver, Esq.
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Law Office of Jack Silver
Jerry Bernhaut, Esq.
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Sebastopol, CA 95472
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All communications should be directed to Jerry Bernhaut, Esquire, Direct Dial: (707) 595-1852, j3bernhaut@gmail.com.

REMEDIAL MEASURES REQUESTED

River Watch believes that implementation of the following remedial measures are necessary in order to bring the Discharger into compliance with the CWA and reduce the biological impacts from its non-compliance upon public health and the environment surrounding the Kenwood Vineyards site:

1. Modification of the Discharger's SWPPP to include sampling for indicator parameters to determine whether pollutants identified in the pollutant source assessment of the Discharger's SWPPP are present in the discharge from the Kenwood Vineyards facility.
2. Modification of the Discharger's SWPPP to include sampling for pollutants for which Sonoma Creek is listed as impaired pursuant to CWA § 303(d).
3. Modification of the Discharger's SWPPP to include more specific descriptions of BMPs employed at the Kenwood Vineyards facility.
4. Modification of the Discharger's SWPPP to include implementation of additional BMPs necessary to prevent the presence of pollutants in discharges from the Kenwood Vineyards facility detected by additional sampling requirements under measures 1 and 2 above.

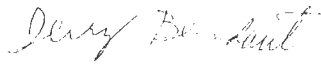
CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch may use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use, and enjoyment of this natural resource is specifically impaired by the Discharger's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations, pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** “notice period” to promote resolution of disputes. River Watch strongly encourages the Discharger to contact River Watch within **20 days** of receipt of this Notice to: (1) initiate a discussion regarding the allegations detailed in this Notice, and (2) set a date for a site visit to the Kenwood Vineyards facility. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating the Discharger is in compliance with the strict terms and conditions of the new General Permit, River Watch intends to file a citizen’s suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jerry Bernhaut".

Jerry Bernhaut, Esq.

Service List

Administrator

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✓ Regional Administrator
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Executive Director

State Water Resources Control Board
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